

Response to Draft Electronic Communications (Net Neutrality) Regulations,  
Consultation Document 1/N0.1

## **I. Zero - Rating**

On the one hand, zero-rating programs have existed worldwide for many years, what has encouraged the development of connectivity in several areas around the world. In this regard, there has not been concrete evidence that this type of practice, *prima facie*, constitutes an abuse or exercises harm. Therefore, there is no concrete evidence that could sustain its banning. Zero-rating offers and mobile data programs can have positive effects for consumers and competition, while following open Internet principles and treating all traffic and content providers fairly. For example, zero-rating programs can be an excellent opportunity to connect more people, bringing them all the social and economic benefits that the Internet can provide, helping consumers to pursue different tasks in a more productive way.

That being said, we support ECTEL's proposal to continue permitting zero-rating programs<sup>2</sup>, as we understand that allowing zero-rating programs does not necessarily collide with the adoption of net neutrality principles. Zero-rating programs can be designed in ways that are fair to competitors and consumers, developed on a non-exclusive basis and be open without charge to any comparable service of a given type (like messaging services or video).

We believe that addressing any concerns that could arise on a case-by-case basis, without depriving the consumers of the benefits zero-rating programs can bring, is an interesting approach over this matter. In this regard, setting general principles to address a case-by-case review could be an excellent way to satisfy any concerns. Hereof, the principles of non-exclusivity<sup>3</sup>, non-affiliation<sup>4</sup> and transparency<sup>5</sup> could become suitable to fulfill this purpose.

Zero-rating programs generate interesting short and long-term benefits, in terms of direct and indirect impacts for the under-connected or unconnected. Regarding the first group, zero-rating programs offer the chance for those who are under-connected to enjoy a more consistent connection, providing a baseline of connectivity, and certainty over the price of their data plan. This allows them to stay online within the zero-rating services instead of dropping off when they run out of data, what softens the gaps in connectivity. For those who are unconnected, zero-rating programs can provide the first step into experiencing the relevance and opportunity that the Internet can provide. This can incentivize them to continue this online experience outside the offered zero-rating services. Therefore zero-rating programs can be seen as a tool for helping people stay connected even when they have

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<sup>2</sup> Draft Net Neutrality Regulations, 8(2).

<sup>3</sup> Zero-rating programs would be available to all operators, and operators would be free to enter arrangements with any content providers.

<sup>4</sup> Independent arrangement between operators and content providers, as not to favour the operator's own content over other content providers.

<sup>5</sup> Clear disclosure of the terms of the offering.

temporarily exhausted their data balance. Being that said, we back ECTEL's proposition regarding the facilitation of creative pricing options through zero - rating, as providing flexibility in this regard can have a significant positive impact on connectivity and consumer choice. Nevertheless, the Draft Net Neutrality Regulations proposes prohibiting zero-rating programs from being exempt from any restrictive measures once an applicable data cap or threshold has been exceeded.<sup>6</sup> Regarding this matter, we suggest that reasonable transitional period of time is given, where unconnected or under-connected consumers can enjoy zero-rated services while still being able to acquire extra data.

## **II. Net Neutrality**

Net neutrality protections are necessary to ensure that providers of IAS (Internet Access Service) do not leverage their control under the network infrastructure to refrain consumers from accessing certain content or service. If these kind of practices were to happen, innovation could be strongly hampered, SMEs could be affected and consumers choice could be heavily harmed. A wide range of jurisdictions have currently banned blocking, throttling and paid prioritization traffic management practices, as these could clearly affect competition and consumers choice.

In this regard, ECTEL's proposal of adopting protections over net neutrality is an excellent opportunity to generate a legal framework that encompasses the growth of innovative businesses, while empowering competition and consumers choice, by prohibiting IAS from engaging in blocking, throttling, or paid prioritization and that reasonable traffic management practices should be based on objective technical criteria, not commercial considerations, under the principles of transparency, non-discrimination, and proportionality. Therefore, we support ECTEL's proposal to prohibit providers of IAS from blocking or throttling certain content, applications or services, or engaging in paid prioritization<sup>7</sup> and the establishment of requirements of reasonability, proportionality, transparency and non-discrimination.<sup>8</sup>

## **III. Conclusions**

ALAI welcomes the opportunity given to subscribe comments to ECTEL's proposal, regarding these very important topics. As stated above, net neutrality protections are vital for fostering innovation, creating a healthy digital ecosystem and maximizing the economic benefits that the Internet can provide. We encourage ECTEL to continue working on permitting zero-rating practices, addressing any concerns that could arise on a case-by-case basis, without depriving the consumers of the benefits zero-rating programs can bring.

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<sup>6</sup> Draft Net Neutrality Regulations, 8(2)(a).

<sup>7</sup> Draft Net Neutrality Regulations, 6(2).

<sup>8</sup> Draft Net Neutrality Regulations, 9(3)(a).